

9/14/09
(10)

DISPOSITION AGREEMENT

This Disposition Agreement is made this 10th day of April, 2009 by and between the Town of Acton (the "Town"), 472 Main Street, Acton, MA 01720, the Commonwealth of Massachusetts Department of Housing and Community Development ("DHCD"), 100 Cambridge Street, Boston, MA, LaSalle Bank, NA, 2571 Busse Road, Suite 200, Elk Grove Village, IL 60007 ("LaSalle"), and Ernest and Christine Lang, 116 Russet Lane, Boxborough, MA 01719 (the "Langs").

WITNESSETH:

WHEREAS, the Langs acquired the real property known and numbered as 670 Massachusetts Avenue (a/k/a. 668 Mass. Ave.), Acton, Massachusetts (the "Property") by deed dated January 14, 1999, recorded with the Middlesex South District Registry of Deeds in Book 29663, Page 127, and by Confirmatory Deed recorded with said Deeds in Book 31345, Page 111, subject to an affordable housing restriction under DHCD's Local Initiative Program (the "Deed Rider") recorded with said Deed and Confirmatory Deed.

WHEREAS, the Town and DHCD have enforcement rights under the Deed Rider.

WHEREAS, under the Deed Rider, the Langs were precluded from mortgaging the Property without obtaining the consent of the Town and DHCD.

WHEREAS, the Langs granted a mortgage on the Property on June 23, 2004 to Fremont Investment and Loan, Inc., by mortgage instrument recorded with said Deeds in Book 43150, Page 321 in the amount of \$211, 250 (the "Fremont Mortgage") without the consent of the Town or DHCD.

WHEREAS, the Fremont Mortgage was assigned to LaSalle on November 13, 2006 by instrument recorded with said Deeds in Book 48567, Page 389.

WHEREAS, on December 13, 2006, LaSalle filed a Complaint to Foreclose the Fremont Mortgage in the Land Court.

WHEREAS, on March 9, 2007, the Town, through its attorney, notified LaSalle and others of the violation of the Deed Rider, and demanded that LaSalle immediately suspend all foreclosure proceedings pending the resolution of the Town's enforcement of the Deed Rider.

WHEREAS, on March 15, 2007, LaSalle, through its attorney, agreed to and did suspend its foreclosure proceedings.

NOW THEREFORE, in consideration of the mutual promises contained herein and for good and valuable consideration, the sufficiency of which are hereby irrevocably acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

1. Disposition of the Property.

(A) **Upon execution of this Agreement**, the Langs shall convey fee simple title to the Property to LaSalle by deed-in-lieu-of-foreclosure. The Langs shall deliver full possession of the Property, free of tenants and occupants and any personal items or effects. The Langs's deed shall deliver good and clear record and marketable title to the Property.

(B) On or before **April 20, 2009**, LaSalle shall offer fee simple title to the Property to the Town. There shall be no conditions on LaSalle's offer; the offer shall be governed by the terms of this Agreement. The Town shall notify LaSalle as to whether the Town (on behalf of itself or its nominee which may include either the Acton Community Housing Corporation or the Acton Housing Authority) will exercise its rights under LaSalle's offer within thirty (30) business days of the Town's receipt of the offer (the "Due Diligence Period"). Alternatively, the Town may exercise its rights under said offer by notifying LaSalle (within said 30 days) of the Town's intention to facilitate a sale of the Property to a third-party purchaser, who shall be an income-eligible household in conformity with the regulations under the Local Initiative Program, 760 CMR 56.00 *et seq.* (the "LIP Program"). The Town, its nominee, or the third-party purchaser shall have ninety (90) days from the Town's acceptance of LaSalle's written offer to take title and purchase the Property for \$181,875 (the "Offer Price") (representing the maximum re-sale price as governed by the Deed Rider. The Town or its nominee may assign its rights under an accepted offer to an income-eligible household in conformity with the regulations under the LIP Program. If conveyed to a third-party purchaser under the LIP Program, said conveyance shall be subject to an affordable housing restriction in a form acceptable to the Town and DHCD. If the Town (on behalf of itself or its nominee) does not accept LaSalle's offer, LaSalle may convey the Property free and clear of any restrictions contained in this Agreement or the Deed Rider at an advertised public auction, provided that any proceeds obtained at said auction that exceed the Offer Price set forth herein (the "Excess Proceeds") shall be remitted to the Town pursuant to G.L. c. 44, § 53A, for further investment (along with any interest thereon) in affordable housing in the Town of Acton. Any such auction shall be advertised at LaSalle's expense in the Acton Beacon in two consecutive weeks prior to the auction, and written notice of the auction shall be posted by LaSalle on the bulletin board in Town Hall and delivered by LaSalle to the Town and DHCD pursuant to Section 8 below at least two weeks prior to the auction. The Langs and LaSalle each agree to execute, deliver to the Town and DHCD, and file a "Disclosure of Beneficial Interests in Real Property Transactions" certificate as required by G.L. c. 7, § 40J.

(C) LaSalle shall undertake and complete the following repairs to the Property by **April 20, 2009** to the satisfaction of the Town:

1. Repair broken handle on bedroom window;
2. Repair broken interior stair treads;
3. Replace rotted exterior fascia above back door of house; and
4. Replace any missing shingles on roof.

Additionally, LaSalle shall repair any additional damages or defects that have arisen since the last inspection on October 21, 2008, including repairing any pipes that froze over the winter.

In the event of damage to or destruction of the Property by fire, vandalism or other casualty between the date of this Agreement and the date on which the Town or its nominee or assignee takes title to the Property, the purchase price shall be reduced by the value of the damage as determined by an appraisal acceptable to the Town (or, if applicable, its nominee). Any insurance proceeds resulting from said damage or destruction shall inure to LaSalle. In the event of any damage or destruction which exceeds \$10,000 in value, or in the event of a taking of all or a part of the premises by eminent domain, then at the Town's option (or, if applicable, its nominee's option), any offer acceptance may be unilaterally rescinded, and LaSalle may convey the Property free and clear of any restrictions contained in this Agreement or the Deed Rider at an advertised public auction, provided that any proceeds obtained at said auction that exceed the Offer Price set forth herein (the "Excess Proceeds") shall be remitted to the Town pursuant to G.L. c. 44, § 53A, for further investment (along with any interest thereon) in affordable housing in the Town of Acton. Any such auction shall be advertised at LaSalle's expense in the Acton Beacon in two consecutive weeks prior to the auction, and notice of the auction shall be posted by LaSalle on the bulletin board in Town Hall and delivered by LaSalle to the Town and DHCD pursuant to Section 8 below at least two weeks prior to the auction.

(D) If the Property is conveyed to the Town or its nominee, the Town or its nominee shall promptly re-convey the Property to an income-eligible household in conformity with the regulations of the LIP Program. Prior to the closing on the re-conveyance, DHCD shall provide the Town (or, if applicable, its nominee) with a certificate in recordable form releasing the Property from prior Deed Rider contingent upon the recording of a new Deed Rider.

(E) LaSalle and the Langs hereby grant an irrevocable license to the Town and its nominees, agents and representatives to enter onto the Property to inspect its condition from the effective date of this Agreement through the Due Diligence Period, and to perform repairs and upgrades as deemed necessary in the Town's (or, if applicable, its nominee's) sole, subjective discretion, and at the Town's (or, if applicable, its nominee's) expense with any available subsidies from DHCD, after the Town (on behalf of itself or its nominee) accepts LaSalle's offer. LaSalle agrees that the Town (or, if applicable, its nominee) may place a lien on the Property through the recording of a Statement of Claim in the form required by G.L. c. 139, § 3A, securing the reimbursement of any improvements made by the Town (or, if applicable, its nominee) to the Property under Section 1(D) or 1(E), and LaSalle hereby grants such a lien to the Town (or, if applicable, its nominee), provided however that the lien shall only be enforceable by the Town (or, if applicable, its nominee) if the Town accepts LaSalle's offer under Section 1(B) above, and the Property is not conveyed to the Town or its nominee or assignee.

(F) The Langs and LaSalle agree to maintain property casualty insurance on the Property at their expense, with coverage equal to at least the sale price set forth under Section 1(B) above, until the transfer of the Property to the Town or its assignee as provided under Section 1(B).

2. Forbearance by the Town and DHCD. In consideration of the promises made herein, the Town and DHCD agree not initiate suit in a court of competent jurisdiction to enforce the Deed Rider pending the parties' performance of their respective obligations hereunder. If

LaSalle and/or the Langs breach this Agreement, the Town and/or DHCD may initiate a civil action to enforce the terms of this Agreement and/or the Deed Rider, and may exercise whatever rights they may have under the Deed Rider or under common law. This Agreement may be enforced by specific performance, and the Town and DHCD shall be presumed to be irreparably harmed by any breach this Agreement by LaSalle and/or the Langs.

3. Forbearance by the Langs. In consideration of the promises made herein, the Langs agree not to contest the foreclosure of the Fremont Mortgage in any forum or venue, and agree not to contest the Town and DHCD's enforcement of this Agreement and/or the Deed Rider as set forth under this Agreement.

4. Forbearance by LaSalle. In consideration of the conveyance of a deed-in-lieu-of-foreclosure by the Langs in accordance with this Agreement, LaSalle shall not pursue any foreclosure proceedings in any forum or venue, and shall dismiss any such actions or proceedings currently pending in any court upon acceptance of the deed-in-lieu.

5. Payment of the Town's Lien and Expenses. Upon the sale to the Town or the Town's nominee or assignee under Section 1(C) hereof or upon the auction of the Property by LaSalle under Section 1(B) or Section 1(C) hereof, LaSalle shall deliver to the Town Treasurer a certified or bank check payable to the Town in full for all outstanding real estate taxes, CPA charges, and all other municipal liens, interest, and penalties on the Property through the closing thereon. The Town shall in return issue a release of municipal liens to the extent of such payment. Further, in return for the Town hereby waiving its right to obtain the loan proceeds from the Fremont Mortgage under Section 3 of the Deed Rider, LaSalle shall pay to the Town upon the execution of this Agreement the sum of \$15,000, representing reimbursement to the Town of the approximate amount of the legal services provided and to be provided to the Town in the enforcement of the Deed Rider in this matter, including the subsequent re-sale to the next income-eligible household.

6. Enforceability; Successors and Assigns; Term; Authority. This Agreement shall be binding on the parties hereto and their respective nominees, heirs, successors and assigns. Each individual signing this Agreement on behalf of the Langs, the Town, DHCD and LaSalle warrants and represents that he or she is authorized to do so by all requisite action of said parties. The covenants described above shall run with the land and the obligations imposed by this Agreement shall be binding on the parties' successors and assigns as owners, running to the benefit of the Town (and if applicable its nominee) and DHCD. LaSalle and the Langs intend, declare and covenant on behalf of themselves, and their respective successors and assigns, that this Agreement and the covenants, agreements, rights and restrictions contained herein are not merely personal covenants, and shall inure to the benefit of the Town (and if applicable its nominee) and DHCD and their successors and assigns for the term of this Agreement. The Langs and LaSalle hereby agree that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

7. Term. The term of this Agreement shall be perpetual, provided however that this Agreement shall terminate upon the transfer of the Property by the Town, or LaSalle, to an income-eligible household pursuant to Section 1(B) of this Agreement.

8. Notice. Any notices, demands or requests that may be given under this Agreement shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the following parties at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Town:

Town of Acton
c/o Town Manager
Acton Town Hall
472 Main Street
Acton, MA 01720

with a copy to Town Counsel:

Stephen D. Anderson, Esq.
Anderson & Kreiger, LLP
One Canal Park, Suite 200
Cambridge, MA 02141

DHCD:

Deborah Goddard, Chief Counsel
DHCD
100 Cambridge Street
Suite 300
Boston, MA 02114

LaSalle:

Larry Scofield, Esq.
Ablitt Law Offices, P.C.
304 Cambridge Road
Woburn, MA 01801

The Langs:

Ernest and Christine Lang
116 Russet Lane
Boxborough, MA 01719

9. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be construed as a Massachusetts contract and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. The parties hereby irrevocably submit to the non-exclusive jurisdiction of any

State court sitting in Suffolk or Middlesex County, Massachusetts over any suit, action or proceeding arising out of or relating to this Agreement.

10. Dispute Resolution. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be subject to good faith resolution efforts by the parties and their attorneys, including non-binding mediation with a mutually acceptable mediator, before any action is commenced. The parties shall equally divide the mediator's fees and costs.

11. Partial Invalidity. If any provision of this Agreement shall be determined to be unenforceable in any circumstances by a court of competent jurisdiction, then the balance of this Agreement shall be enforceable nonetheless, and the subject provision shall be enforceable in all other circumstances.

12. No Waiver. Failure of any party to this Agreement to avail itself of any of the terms, covenants and conditions of this Agreement for a period of time or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder.

13. Amendments. No change, amendment, modification, cancellation or termination of this Agreement hereof, or any part of this Agreement shall be valid unless all parties to this Agreement consent thereto in writing.

14. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

Duly authorized and executed as a sealed instrument as of the date first written above.

TOWN OF ACTON
BOARD OF SELECTMEN

DEPARTMENT of HOUSING and
COMMUNITY DEVELOPMENT

By: _____
Tina Brooks, Undersecretary

LASALLE BANK, NA

By: _____

Ernest Lang

Christine Lang

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

_____, 2009

On this _____ day of _____, 2009, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Chairman of the Acton Board of Selectmen.

Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss.

_____, 2009

On this _____ day of _____, 2009, before me, the undersigned notary public, personally appeared Tina Brooks, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as Undersecretary of the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

_____, 2009

On this _____ day of _____, 2009, before me, the undersigned notary public, personally appeared Ernest Lang, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

_____, 2009

On this _____ day of _____, 2009, before me, the undersigned notary public, personally appeared Christine Lang, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires: